

AMENDMENT TO H.R. 1534
OFFERED BY MR. ALLEN OF MAINE

Amend section 5 to read as follows:

1 **SEC. 5. LONG-TERM STORAGE.**

2 (a) ESTABLISHMENT OF PROGRAM.—Not later than
3 January 1, 2010, the Secretary of Energy (in this section
4 referred to as the “Secretary”) shall accept custody, for
5 the purpose of long-term management and storage, of ele-
6 mental mercury generated within the United States and
7 delivered to a facility of the Department of Energy des-
8 igned by the Secretary.

9 (b) FEES.—

10 (1) IN GENERAL.—After consultation with per-
11 sons who are likely to deliver elemental mercury to
12 a designated facility for long-term management and
13 storage under the program prescribed in subsection
14 (a), and with other interested persons, the Secretary
15 shall assess and collect a fee at the time of delivery
16 for providing such management and storage, based
17 on the pro rata cost of long-term management and
18 storage of elemental mercury delivered to the facil-
19 ity. The amount of such fees—

1 (A) shall be made publically available not
2 later than October 1, 2009;

3 (B) may be adjusted annually; and

4 (C) shall be set in an amount sufficient to
5 cover the costs described in paragraph (2).

6 (2) COSTS.—The costs referred to in paragraph
7 (1)(C) are the costs to the Department of Energy of
8 providing such management and storage, including
9 facility operation and maintenance, security, moni-
10 toring, reporting, personnel, administration, inspec-
11 tions, training, fire suppression, closure, and other
12 costs required for compliance with applicable law.
13 Such costs shall not include costs associated with
14 land acquisition or permitting of a designated facil-
15 ity under the Solid Waste Disposal Act or other ap-
16 plicable law. Building design and building construc-
17 tion costs shall only be included to the extent that
18 the Secretary finds that the management and stor-
19 age of elemental mercury accepted under the pro-
20 gram under this section cannot be accomplished
21 without construction of a new building or buildings.

22 (c) REPORT.—Not later than 60 days after the end
23 of each Federal fiscal year, the Secretary shall transmit
24 to the Committee on Energy and Commerce of the House
25 of Representatives and the Committee on Environment

1 and Public Works of the Senate a report on all of the
2 costs incurred in the previous fiscal year associated with
3 the long-term management and storage of elemental mer-
4 cury. Such report shall set forth separately the costs asso-
5 ciated with activities taken under this section.

6 (d) MANAGEMENT STANDARDS FOR A FACILITY.—

7 (1) GUIDANCE.—Not later than October 1,
8 2009, the Secretary, after consultation with the Ad-
9 ministrator of the Environmental Protection Agency
10 and all appropriate State agencies in affected States,
11 shall make available, including to potential users of
12 the long-term management and storage program es-
13 tablished under subsection (a), guidance that estab-
14 lishes procedures and standards for the receipt,
15 management, and long-term storage of elemental
16 mercury at a designated facility or facilities, includ-
17 ing requirements to ensure appropriate use of flasks
18 or other suitable shipping containers. Such proce-
19 dures and standards shall be protective of human
20 health and the environment and shall ensure that
21 the elemental mercury is stored in a safe, secure,
22 and effective manner. In addition to such procedures
23 and standards, elemental mercury managed and
24 stored under this section at a designated facility
25 shall be subject to the requirements of the Solid

1 Waste Disposal Act, including the requirements of
2 subtitle C of that Act, except as provided in sub-
3 section (g)(2) of this section. A designated facility in
4 existence on or before January 1, 2010, is author-
5 ized to operate under interim status pursuant to sec-
6 tion 3005(e) of the Solid Waste Disposal Act until
7 a final decision on a permit application is made pur-
8 suant to section 3005(e) of the Solid Waste Disposal
9 Act. Not later than January 1, 2012, the Adminis-
10 trator of the Environmental Protection Agency (or
11 an authorized State) shall issue a final decision on
12 the permit application.

13 (2) TRAINING.—The Secretary shall conduct
14 operational training and emergency training for all
15 staff that have responsibilities related to elemental
16 mercury management, transfer, storage, monitoring,
17 or response.

18 (3) EQUIPMENT.—The Secretary shall ensure
19 that each designated facility has all equipment nec-
20 essary for routine operations, emergencies, moni-
21 toring, checking inventory, loading, and storing ele-
22 mental mercury at the facility.

23 (4) FIRE DETECTION AND SUPPRESSION SYS-
24 TEMS.—The Secretary shall—

1 (A) ensure the installation of fire detection
2 systems at each designated facility, including
3 smoke detectors and heat detectors; and

4 (B) ensure the installation of a permanent
5 fire suppression system, unless the Secretary
6 determines that a permanent fire suppression
7 system is not necessary to protect human
8 health and the environment.

9 (e) INDEMNIFICATION OF PERSONS DELIVERING
10 ELEMENTAL MERCURY.—

11 (1) IN GENERAL.—(A) Except as provided in
12 subparagraph (B) and subject to paragraph (2), the
13 Secretary shall hold harmless, defend, and indemnify
14 in full any person who delivers elemental mercury to
15 a designated facility under the program established
16 under subsection (a) from and against any suit,
17 claim, demand or action, liability, judgment, cost, or
18 other fee arising out of any claim for personal injury
19 or property damage (including death, illness, or loss
20 of or damage to property or economic loss) that re-
21 sults from, or is in any manner predicated upon, the
22 release or threatened release of elemental mercury as
23 a result of acts or omissions occurring after such
24 mercury is delivered to a designated facility de-
25 scribed in subsection (a).

1 (B) To the extent that a person described in
2 subparagraph (A) contributed to any such release or
3 threatened release, subparagraph (A) shall not
4 apply.

5 (2) CONDITIONS.—No indemnification may be
6 afforded under this subsection unless the person
7 seeking indemnification—

8 (A) notifies the Secretary in writing within
9 30 days after receiving written notice of the
10 claim for which indemnification is sought;

11 (B) furnishes to the Secretary copies of
12 pertinent papers the person receives;

13 (C) furnishes evidence or proof of any
14 claim, loss, or damage covered by this sub-
15 section; and

16 (D) provides, upon request by the Sec-
17 retary, access to the records and personnel of
18 the person for purposes of defending or settling
19 the claim or action.

20 (3) AUTHORITY OF SECRETARY.—(A) In any
21 case in which the Secretary determines that the De-
22 partment of Energy may be required to make indem-
23 nification payments to a person under this sub-
24 section for any suit, claim, demand or action, liabil-
25 ity, judgment, cost, or other fee arising out of any

1 claim for personal injury or property damage re-
2 ferred to in paragraph (1)(A), the Secretary may
3 settle or defend, on behalf of that person, the claim
4 for personal injury or property damage.

5 (B) In any case described in subparagraph (A),
6 if the person to whom the Department of Energy
7 may be required to make indemnification payments
8 does not allow the Secretary to settle or defend the
9 claim, the person may not be afforded indemnifica-
10 tion with respect to that claim under this subsection.

11 (f) TERMS, CONDITIONS, AND PROCEDURES.—The
12 Secretary is authorized to establish such terms, conditions,
13 and procedures as are necessary to carry out this section.

14 (g) EFFECT ON OTHER LAW.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), nothing in this section changes or affects
17 any Federal, State, or local law or the obligation of
18 any person to comply with such law.

19 (2) EXCEPTION.—(A) Elemental mercury that
20 the Secretary is storing on a long-term basis shall
21 not be subject to the storage prohibition of section
22 3004(j) of the Solid Waste Disposal Act (42 U.S.C.
23 6924(j)). For the purposes of section 3004(j) of the
24 Solid Waste Disposal Act, a generator accumulating
25 elemental mercury destined for a facility designated

1 by the Secretary under subsection (a) for 90 days or
2 less shall be deemed to be accumulating the mercury
3 to facilitate proper treatment, recovery, or disposal.

4 (B) Elemental mercury that is stored at a facil-
5 ity with respect to which a permit has been issued
6 under section 3005(c) of the Solid Waste Disposal
7 Act (42 U.S.C. 6925(c)) shall not be subject to the
8 storage prohibition of section 3004(j) of the Solid
9 Waste Disposal Act (42 U.S.C. 6924(j)) if—

10 (i) the Secretary is unable to accept the
11 mercury at a facility designated by the Sec-
12 retary under subsection (a) for reasons beyond
13 the control of the owner or operator of the per-
14 mitted facility;

15 (ii) the owner or operator of the permitted
16 facility certifies in writing to the Secretary that
17 it will ship the mercury to the designated facil-
18 ity when the Secretary is able to accept the
19 mercury; and

20 (iii) the owner or operator of the permitted
21 facility certifies in writing to the Secretary that
22 it will not sell, or otherwise place into com-
23 merce, the mercury.

24 This subparagraph shall not apply to mercury with
25 respect to which the owner or operator of the per-

1 mitted facility fails to comply with a certification
2 provided under clause (ii) or (iii).

3 (h) STUDY.—Not later than July 1, 2011, the Sec-
4 retary shall transmit to the Congress the results of a
5 study, conducted in consultation with the Administrator
6 of the Environmental Protection Agency, that—

7 (1) determines the impact of the long-term stor-
8 age program under this section on mercury recy-
9 cling; and

10 (2) includes proposals, if necessary, to mitigate
11 any negative impact identified under paragraph (1).

Page 7, line 12, insert “(not including new mercury
mines)” after “from domestic supplies”.

Amend the title so as to read: “A Bill to prohibit
certain sales, distributions, and transfers of elemental
mercury, to prohibit the export of elemental mercury, and
for other purposes.”.